

**(2016) 02 BOM CK 0070**

**In the Bombay High Court**

**Case No :** Criminal Writ Petition No. 3761 of 2014

Uday Shivram Patane

APPELLANT

Vs

Vijayrao Kondiram Borawake, Dashrath Tukaram Dandile,  
Ramchandra Laxman Abdagire, The State of Maharashtra

RESPONDENT

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**Date of Decision :** 17-02-2016

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 309, 403, 406, 418, 468, 477

**Citation :** (2016) ALLMRCri 1689 : (2016) 2 BomCR(Cri) 589 : (2016) 3 MhLJCri 380

**Hon'ble Judges :** Dr. Shalini Phansalkar Joshi, J.

**Bench :** Single Bench

**Advocate :** V.S. Taalkute, Advocate, H.J. Dedia, APP, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dr. Shalini Phansalkar Joshi, J. (Oral) - Heard learned counsel for the parties.

2. Rule.

3. Rule made returnable forthwith.

4. By this petition, the original complainant is challenging the judgment and order dated 7th March, 2014, passed by the Additional Sessions Judge, Satara, in Criminal Revision Application No. 131 of 2010. By the impugned order, the Revisional Court, has quashed the process issued against respondents, by Judicial Magistrate First Class, 5th Court, Satara, in Criminal Case No. 77 of 2007, by its order dated 7th May, 2010, for the offence punishable under Sections 403 406, 309, 167, 120(b), 418, 468 and 477 of the Indian Penal Code.

5. Brief facts of the petition are to the effect that as per petitioner, he was working as Assistant Manager of Yeshwantrao Cooperative Bank, Phaltan. However, he has been dismissed from service on the allegations of misappropriation against him. Thereafter offence has also been registered

against him and suit No. 888 of 1997, was filed against him by at Co-operative Court at Satara. In the said Court, his assets and the assets of his wife had also been freezed. The petitioner, therefore, requested respondent No. 2, who was the Chairman of Vijayrao Borawake Nagari Sahakari Pat Sanstha, for financial assistance. His request was accepted by respondent No. 2 and he was promised that a loan amount of Rs. 1,00,000/- to the petitioner, Rs. 75,000/- to his wife and Rs. 75,000/- to his son Swapnil will be granted. According to petitioner, thereafter respondent No. 3, the Manager of the said credit society came to his house along with blank loan application form, recommendation form, promissory note, loan vouchers, application for membership, challans etc. He then obtained signatures of the petitioner himself, his wife and son on loan proposal.

6. The petitioner had totally issued six blank cheques by way of security for repayment of loan amount and even put the signatures of himself, his wife and son on the blank forms. According to petitioner, however, no loan amount disbursed to him, his wife or son. Despite that he received intimation from said Credit Society for making repayment of loan. Hence the petitioner, approached respondent No. 3 and requested for return of blank cheques on the count that he has not received any loan amount and he is not member of the society. According to petitioner, thereafter respondent No. 2 promised him that loan proposal will be cancelled. Despite that the petitioner received a notice dated 7.11.2001, for repayment of loan amount. On further enquiry, he came to know that respondents had misused blank cheques issued by him by showing that the amounts which was to be disbursed to him as loan amount, were credited towards repayment of loan amount taken by his brother and father namely Kisan Dandile in Priyadarshini Mahila Indira Gandhi Cooperative Society.

7. Being aggrieved by the misuse of his blank cheques and the entire loan proposal which was promised to him, the petitioner approached the trial Court, for issuance of process against respondents, for the various offences, as stated above.

8. On his complaint, initially, trial Court issued a direction for police investigation under Section 156(3) of Code of Criminal Procedure (for short called as "Code"). From time to time adjournment was sought by the police to submit report. Ultimately final report was filed by the police informing the trial Court that no investigation could be carried on account of non co-operation on the part of the petitioner. On receipt of this report from the police, the trial Court perused the documents and contentions of the petitioner and thereafter issued process against respondents for various offences, as stated above.

9. This order of the trial Court was challenged by respondents herein before the Additional Sessions Court, by preferring Criminal Revision Application No.131 of 2010. By the impugned order, Revisional Court found that prima facie petitioner has failed to make out any ground for issuance of process. Secondly, it was also held that the trial Court has adopted a wrong procedure while issuing process against respondents. It was observed by the Revisional Court that once the trial

Court has adopted a mode of directing investigation under Section 156(3) of the Code, thereby holding that there was no material to issue process against respondents, then the trial Court could not have issued process when there was no additional material especially in the light of the report under Section 156(3) of the Code to the effect that no investigation could be carried out for want of co-operation from the petitioner.

10. This order of the Sessions Court is challenged in this petition by learned counsel for the petitioner by submitting that there was no fault on the part of petitioner if the trial Court has adopted a wrong procedure as the petitioner would have led his evidence and produced additional material if he was given an opportunity to do so, after Investigating Officer has filed his report under Section 156(3) of the Code. According to learned counsel for the petitioner, petitioner is left nowhere as neither police have carried out investigation nor Magistrate has followed the proper procedure of giving him an opportunity to lead evidence or to produce additional material.

11. Learned counsel for petitioner has submitted that prima facie there was sufficient material to prove the offences alleged against respondents and hence Revisional Court should not have quashed the process on the threshold itself thereby depriving the petitioner from proving his case on merits. According to him, from the fact that investigation by police was directed, it follows that there was some substance found by the Magistrate in the complaint filed by the petitioner and it is sufficient at the stage of order of issuing process.

12. Per contra, learned counsel for respondent has supported the impugned order by submitting that the complaint suffers from inordinate delay as it was filed before the trial Court by the petitioner after lapse of more than 7 years from the alleged incident. Secondly, it is urged that petitioner himself is not disputing his signatures and signatures of his wife and son on the cheques and other application forms for loan. Therefore, there was no question of respondent cheating the petitioner or committing forgery. According to him, on merits, the petitioner had no case and hence Revisional Court has rightly quashed the process issued against the respondents.

13. At the outset itself, it has to be stated that the petitioner is not disputing his signatures, signatures of his wife and son on the cheques, and also on the loan proposal, vouchers and other forms. Moreover, it is not the case of petitioner that he was induced in any way to sign on all these documents. It is pertinent to note that as per averments made in the complaint itself, the petitioner has categorically stated that he was in need of money to satisfy the amount claimed against him in Recovery Suit No. 888 of 1997. He has further stated that his accounts in the Priyadarshini Indira Gandhi Mahila Patsanstha, Priyadarshini Indira Gandhi Mahila Sahakari Grahak Sanstha and Priyadarshini Indira Gandhi Mahila Sahakari Audyogik Sanstha Ltd. Phaltan, were freezed of which his wife was Chairman. Thus, it is not disputed that the petitioner was in financial need and therefore, he himself has approached respondent no. 2, who was Chairman

of Vijayrao Borawake Nagari Sahakari Patsanstha for financial assistance and accordingly on his request, proposal of loan was sanctioned for the amounts as claimed and requested by him. Thereafter, he himself, his wife and son, on their own accord have signed on the cheques, forms of loan proposal etc. In such situation, where the question arises of petitioner being induced in any way to sign on those cheques or the forms for loan proposal? There is also no question of forgery at all.

14. As regards the contention of petitioner that he has not received any amount of loan proposal, but he was directed to make repayment of the same and on further enquiry he came to know said loan amount was adjusted towards loan amount taken by his father and brother, if it was not a case of mutual understanding to that effect, then on the receipt of first notice of repayment itself he would have rushed to file this complaint. When first notice is dated 7.11.2001, he would not have kept quiet for such a long period of 7 years.

15. Further the evidence on record also goes to show that respondents had filed criminal cases against petitioner for recovery of loan amount and also for dishonour of cheques. Only after filing of such cases, as a counter blast thereto, it appears that petitioner has filed this case that he has been cheated by respondent.

16. Thus, the complaint itself suffers from the basic lacunas and infirmities. Hence on merits the Revisional Court has rightly held that a bare reading of the complaint does not make out offence for which trial Court has issued the process. Therefore, it cannot be said that the Revisional Court has committed any illegality in quashing the said process.

17. There is also substance in the observations made by the Revisional Court that the trial Court has adopted a wrong procedure in issuing process. When the complaint was filed before the trial Court, initial order passed by trial Court was of directing investigation under Section 156(3) of the Code, thereby indicating that at that time trial Court was not satisfied that there was prima facie case to issue process against respondents. The trial Court also waited for the report of investigation under Section 156(3) of the Code. Only when the report was filed that for want of co-operation from the complainant, investigation could not be carried out, trial Court has issued the process that too without there being any additional material on record. On the receipt of report of investigation under Section 156(3) of the Code, proper course for the trial Court would have been to direct the petitioner to lead some evidence or produce some material and thereafter being satisfied, to take appropriate course of action. The trial court has, however, not done so and on the same material on which it had directed investigation under Section 156(3) of the Code, issued the process. It is true that, if prima facie case on merits, had been made out by the petitioner before this Court, then this Court would have remanded the matter and directed Magistrate to adopt such course, but as on the material produced on record, this Court also does not find that the petitioner is having any prima facie case for

issuance of process against respondents, there is no point in remanding the matter for adopting such course, The net result, therefore is that this Writ Petition holds no merit.

18. Rule discharged. Petition stands dismissed.